

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 22-cr-00164 (RJD)  
: :  
: :  
- versus - : U.S. Courthouse  
: Brooklyn, New York  
THOMAS WELNICKI, : :  
: :  
Defendant : October 28, 2022  
: 1:06 p.m.  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PRETRIAL CONFERENCE  
BEFORE THE HONORABLE SANKET J. BULSARA  
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 THE CLERK: We're here in a pretrial conference  
4 in case number 22-cr-164, *United States v. Welnicki*.

5 Counsel, please state your appearances starting  
6 with the government.

7 MS. GUPTA: Good afternoon, your Honor. Nina  
8 Gupta, Andres Palacio, and Doug Pravda for the United  
9 States.

10 THE COURT: Good afternoon.

11 MS. VON DORNUM: Good afternoon, your Honor.  
12 Deirdre Von Dornum, Federal Defenders of New York, for  
13 Thomas Welnicki. Mr. Welnicki is present next to me.

14 THE COURT: Okay. Good afternoon and good  
15 afternoon, Mr. Welnicki.

16 So I understand from Judge Dearie that the case  
17 will proceed to trial solely on Count 2 in the  
18 superseding indictment. Is that correct?

19 MS. GUPTA: That's correct.

20 THE COURT: So Ms. Von Dornum, in your proposed  
21 voir dire you indicated that depending on the rulings you  
22 would be submitting additional potential voir dire which  
23 I took to mean that if both counts in the superseding  
24 indictment were to go to trial and there was no  
25 severance, you would be submitting additional proposed

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1 questions. But obviously, I'm happy to let you propose  
2 additional questions if that's what you wanted to do.  
3 What's your view at this point?

4 MS. VON DORNUM: No, you read my intentions  
5 correctly, your Honor, I think. If anything, we can  
6 reduce.

7 THE COURT: Okay. There are a few things I  
8 wanted to just go over logistically before we talk about  
9 particular questions. One is there is a list of names  
10 and places that was provided and I think that that  
11 includes names and places that were perhaps relevant only  
12 as to both counts of the superseding indictment. And so  
13 I'd like to have a revised list of names and places and  
14 if one of you can prepare them. And my general view on  
15 this thing is if one side wants a name or place mention,  
16 we should include it on the list. I'm not going to need  
17 to make a ruling about it. So out of an abundance of  
18 caution, you know, I'll include a name or place if either  
19 side wants to do it. So please submit a revised list on  
20 the docket by end of day Tuesday. So that's one thing.

21 The second thing is I understand that there was  
22 an original estimate for this length of trial as between  
23 three and four days. Is that still accurate?

24 MS. GUPTA: No, your Honor. I think it would  
25 be shorter at this point. I think the government would

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1 be done in one day, so perhaps two days for both cases.

2 MS. VON DORNUM: That makes sense.

3 THE COURT: Okay. What I'll tell the jury then  
4 is that the trial is anticipated to last two days,  
5 approximately two days to begin after jury selection is  
6 completed. And there is a possibility that the trial  
7 will not commence until Monday because I don't know how  
8 long jury selection is going to take. And so I want to  
9 leave that out there so that the, for instance, jurors I  
10 speak to on Wednesday morning, if we are still selecting  
11 on Friday or Thursday, don't think oh, I should have been  
12 done already. And I can happily say we anticipate jury  
13 selection being done today but out of an abundance of  
14 caution, it could be that the trial will begin on Monday,  
15 but we anticipate it actually beginning as soon as  
16 selection is completed. Because I don't know what the  
17 parties want to do if we're done with selection Friday at  
18 noon and what Judge Dearie wants to do at that point. So  
19 that's why I'll phrase it that way. Any objection.

20 MS. VON DORNUM: No. I appreciate that, your  
21 Honor, because my worry is always if we promise two days  
22 and the second day is a Friday afternoon that people will  
23 want to leave. So I appreciate your phrasing.

24 THE COURT: Okay. The other thing is I  
25 understand from Judge Dearie he would like two alternates

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1 and so you'll have to check my math. That I believe  
2 means I have to qualify 32.

3 MS. VON DORNUM: Yes, your Honor.

4 THE COURT: The government agree with that?

5 MS. GUPTA: Yes.

6 THE COURT: Okay. If I'm wrong, you can  
7 correct my math before Wednesday. Okay.

8 Judge Dearie has asked for between 70 and 75  
9 jurors to be called in for the case. Now, let me say the  
10 following. It's always possible that we need more but in  
11 a situation where we're following COVID protocols,  
12 masking and social distance, in other words, jury  
13 selections that I've been doing for the last two years,  
14 we were doing multiple rounds using multiple courtrooms.  
15 Okay? And both sides are likely familiar with that  
16 procedure. That ends up taking a lot of time, which is  
17 fine.

18 But my goal would be to perhaps at least  
19 obviate that in large part here. And so I don't expect  
20 70 to 75 will show up. There are invariably no shows.  
21 Right? So assume we get 60 to 65 jurors and we can fit  
22 them in whatever room. We have to count how many are  
23 available in Judge Dearie's courtroom. We may also use  
24 the ceremonial courtroom depending on what's available.  
25 So my goal would be to give preliminary instructions and

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1 do voir dire in the consolidated group of 60. Okay?

2 Now, there's always the few that there'll be a  
3 run on the bank, namely if one juror gets excused, the  
4 other jurors will sort of tag onto the basis and want to  
5 come forward. My experience that tends to happen you  
6 have a pretty lengthy trial and people say I can't serve  
7 for two or three weeks and tends not to happen when you  
8 have a shorter trial of say two days or a week.

9 All that being said, we do have a trial  
10 involving a person of some renown. That may raise some  
11 issues. So I was wondering what the parties thought  
12 about proceeding in the following fashion. Okay?

13 There are a number of questions the government  
14 has proposed and counsel for Mr. Welnicki has proposed  
15 which are what I'll call standard questions that are  
16 asked in almost every case. Then there are some specific  
17 questions that relate to -- or at least one specific  
18 question that relates to Donald Trump. Okay? And I know  
19 that Count 2 of the indictment doesn't actually name  
20 Donald Trump. It says John Doe.

21 Now, one way of doing this is to read a summary  
22 of the charge either by reading the indictment or some  
23 shortened version that doesn't mention Donald Trump  
24 initially, go through all of the questions including do  
25 you know anyone in law enforcement? Do you have a bias

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1 for or against the defendant? Et cetera, et cetera.  
2 Finish. And then in small groups of ten to 15, maybe  
3 ten, either in another courtroom, to the side, wherever,  
4 we'll figure that out, I ask the Donald Trump questions  
5 and say ladies and gentlemen, the former president at  
6 issue here is President Donald Trump. Is there anything  
7 about that that would prevent you from fair and  
8 impartial? I'm going to tweak the language a little bit.  
9 But I would do it that way because my worry is if I  
10 mention Donald Trump at the outset, I'll start getting a  
11 bunch of people coming up and saying in a question about  
12 law enforcement will say you know, Judge, I have such  
13 terrible feelings or positive feelings, or whatever  
14 feelings about Donald Trump that I can't sit in the  
15 trial, and that derails us from getting through the most  
16 important questions, the most important other questions.

17 Is there any objection to proceeding that way?

18 MS. VON DORNUM: Not from the defense, your  
19 Honor.

20 MS. GUPTA: Your Honor, our concern is just  
21 that we would spend a lot of time going through the sort  
22 of standard questions that you mentioned just to find out  
23 at the end that some people have such strong feelings  
24 about the former president that they can't sit on the  
25 jury. So that amount of time that would be spent on that

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1 would sort of -- you know, they wouldn't be able to sit  
2 anyway. So that's the only concern we have.

3 THE COURT: Of course, but that's the point.  
4 Right? Which is that you delay that and you avoid the  
5 risk of a run on the bank. Right? Because if I announce  
6 Donald Trump at the outset, we're going to end up having  
7 people in response to is there anything about the case  
8 that you've heard so far that would prevent you from  
9 being fair and impartial, and we'd have a bunch of Donald  
10 Trump folks. And then we're going to get views on Donald  
11 Trump all through the selection. You're exactly right.  
12 That's the point of doing it this way.

13 MS. GUPTA: I think that works then.

14 THE COURT: So that brings me to the other  
15 logistical question, the summary of the charge or the  
16 summary of the case that I would tell the parties at the  
17 outset. So if I take the government's summary of the  
18 case, it reads as follows. The defendant, Thomas  
19 Welnicki, is charged with one count of threatening to  
20 assault and murder a former president of the United  
21 States between September 2021 and January 2022. Mr.  
22 Welnicki's description would be he's charged with  
23 threatening to kill former President Donald Trump in  
24 telephone calls to the Secret Service.

25 Obviously I would say that Mr. Welnicki has

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1 pled not guilty, denies the charge in the indictment, and  
2 he asserts his innocence. But Ms. Von Dornum, is there  
3 any problem just using the government's formulation? I  
4 think there's something about the timing that is off.  
5 There's a misplaced modifier but I'll deal with that in a  
6 second.

7 MS. VON DORNUM: Yeah. I'm fine with the  
8 timing. I would like it to say in telephone calls to the  
9 Secret Service because I do think it will narrow the  
10 objections that there are people who feel very strongly  
11 about social media or other formats and we may get fewer  
12 objections if they understand the mechanism of the  
13 statements here.

14 THE COURT: Any objection from the government?

15 MS. GUPTA: That's fine. Thank you.

16 THE COURT: Okay.

17 MS. VON DORNUM: And I don't know if you were  
18 planning to use the government's second sentence, but if  
19 so, I would prefer unless proven guilty rather than until  
20 proven guilty.

21 THE COURT: What I was going to use is  
22 something I've used in other cases which is Mr. Welnicki  
23 has pled not guilty, denies the charge in the indictment,  
24 and asserts his innocence. Any objection to that?

25 MS. GUPTA: No.

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1 THE COURT: And so I will not be using that  
2 second sentence.

3 MS. GUPTA: Right.

4 THE COURT: So I'll say the defendant, Thomas  
5 Welnicki, is charged with one count of threatening  
6 through assault and murder a former president of the  
7 United States between September 2021 and January 2022 in  
8 telephone calls to the Secret Service. Okay. All right.

9 And just so everyone knows, on Wednesday  
10 morning we'll give you the jury lists but I'll also give  
11 you the questions I'm going to ask so you can look at it  
12 and if there's anything at that time you find problematic  
13 or wanted altered in any way, you can let me know.

14 Let me just deal with Mr. Welnicki's case  
15 specific questions because I think that there are fewer  
16 of them.

17 MS. VON DORNUM: Now just one, your Honor.

18 THE COURT: Okay. Is it just the U.S. Secret  
19 Service?

20 MS. VON DORNUM: Yes.

21 THE COURT: Okay. I was going to combine that  
22 question with a question I customarily ask. And so let  
23 me read this what I'll call compound question. Do any of  
24 you have any preference, bias, or prejudice concerning  
25 the Department of Justice, the FBI, or the U.S. Secret

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1 Service, or any law enforcement agency that would prevent  
2 you from being fair and impartial in this case? Any of  
3 you have had any personal or professional connection to  
4 anyone employed by any of these agencies? That work?

5 MS. VON DORNUM: That's fine, your Honor.

6 MS. GUPTA: Yes, that works.

7 MS. VON DORNUM: Thank you.

8 THE COURT: Okay. All right. Let me turn to  
9 the -- Ms. Von Dornum and Ms. Gupta, I want to bracket  
10 for discussion in a moment questions 11, 12, and 13 in  
11 the government's proposed voir dire. Okay? Outside of  
12 those, Ms. Von Dornum, are there any objections to  
13 anything the government has asked? And to be clear, I'm  
14 not going to use the exact formulation but I would say  
15 substantially similar, if not identical to those  
16 questions.

17 MS. VON DORNUM: No, your Honor. I'm sure I  
18 will have views on the formulation of 13 when you do  
19 that, but I'm happy to wait to see your formulation and  
20 discuss if needed. Otherwise, the content is fine.

21 THE COURT: Okay.

22 MS. VON DORNUM: I guess on the one about have  
23 you read, heard, or seen anything in the media, if you  
24 could put in some of the standard language of it's  
25 unlikely you would have, but if you did, to make clear

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1 this isn't a notorious case.

2 THE COURT: I'm not familiar with that  
3 formulation. Is there some particular language that --  
4 sorry, so you're trying to convey just that I don't  
5 expect you to have heard anything but --

6 MS. VON DORNUM: Exactly.

7 THE COURT: At the outset. Any objection?

8 MS. GUPTA: No.

9 THE COURT: Well I can say that I do don't  
10 expect that any of you will have heard or read or seen  
11 anything about this case for Mr. Welnicki, but has anyone  
12 in fact?

13 MS. VON DORNUM: That would be great. Thank  
14 you.

15 THE COURT: Ms. Von Dornum, I'm not inclined,  
16 and Ms. Gupta, I want you to respond to this, ask 11 or  
17 12. I think they're inaccurate. The government itself  
18 has proposed long extensive instructions on what the  
19 meaning in the boundaries of the First Amendment in this  
20 area are. And it would be wholly inappropriate to ask  
21 questions that short circuited or for instance used legal  
22 terms like true threat in asking these questions.

23 MS. GUPTA: Sorry, your Honor, just one moment,  
24 please.

25 THE COURT: To be clear, they're not from the

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1 instruction. That's the point. If you look at the  
2 instruction, they go on about two pages each.

3 MS. GUPTA: Right. I think it might be a  
4 shortened version of that.

5 THE COURT: And that's why it's inaccurate.

6 MS. GUPTA: We do think, your Honor, that the  
7 idea expressed in those questions is important. Would it  
8 be possible for us to offer a modification?

9 THE COURT: You can try to offer a modification  
10 but what I'm not going to do is number one, short circuit  
11 the jury charge conference because I suspect Mr. Welnicki  
12 is going to have views about what the phrasing of that  
13 will be and I don't want to prejudice at the outset any  
14 of that.

15 And number two, it's just my general reaction.  
16 This is a complicated area of the law and you can't just  
17 simply say do you have any problems with threats or  
18 convicting someone on what they said because that's not  
19 accurate. That's not what the jury is being asked to do.

20 So my instinct is you're welcome to present  
21 whatever you want. 11 and 12 don't come close.

22 MS. GUPTA: Okay. Understood.

23 THE COURT: And you can just look at both  
24 sides' jury charge. I'll obviously ask them, but I don't  
25 expect that Ms. Von Dornum would agree but I don't know.

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1 If you agree to some formulation, I would ask it, but I  
2 don't see that.

3 MS. VON DORNUM: That's unlikely, your Honor.  
4 I'm certainly happy to read what they propose but it's  
5 unlikely I would agree and that's why I did not submit  
6 anything along those lines.

7 THE COURT: Okay. So I'm not going to ask 11  
8 or 12. I'll look at a reformulation.

9 All right. Ms. Von Dornum, what's your view on  
10 13?

11 MS. VON DORNUM: So I think the current  
12 formulation proposed by the government is over broad and  
13 would probably disqualify the entire pool if we were to  
14 ask that. So I know your Honor had said you were going  
15 to work on the formulation but I think certainly  
16 narrowing it to the actual type of determination a juror  
17 would have to make here, something along the lines of do  
18 any of the opinions that you hold concerning -- would any  
19 of the opinions you hold concerning Donald Trump prevent  
20 you from fairly evaluating the evidence on both sides and  
21 following the law which the judge will instruct you on,  
22 you know, to come. I think that'll give us a much better  
23 outcome and I haven't thought through the exact words,  
24 but something that narrows it.

25 THE COURT: Let me say I agree in part. Let me

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1 propose something and the parties can react. Give me one  
2 moment.

3 (Pause in proceedings)

4 THE COURT: Okay. This case involves alleged  
5 threats to harm or kill former President Donald Trump.  
6 Do any of you have such strong feelings or opinions  
7 related to the former president such that you would not  
8 be fair and impartial in a case where the alleged threat  
9 was directed at former President Trump? Would any of  
10 your feelings about former President Trump prevent you  
11 from being able to follow the laws instructed to you?

12 MS. GUPTA: That works for the government, your  
13 Honor.

14 MS. VON DORNUM: Sorry. Do you mind reading it  
15 again?

16 THE COURT: Sure. This case involves  
17 alleged -- and I'll again, to be clear, you'll get a copy  
18 of the written on Wednesday morning. This case involves  
19 alleged threats to harm or kill former President Donald  
20 Trump. Do any of you have such strong feelings or  
21 opinions related to former President Trump such that you  
22 could not be fair and impartial in a case where the  
23 alleged threat was directed at former President Trump or  
24 at him? Would any of your feelings about former  
25 President Trump prevent you from following the law as

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1 instructed to you?

2 MS. VON DORNUM: That's fine, your Honor.

3 THE COURT: Ms. Gupta, do I need 18? That was  
4 the only question I customarily do not ask. And the  
5 reason being I don't mention punishment and I think it's  
6 appropriate for Judge Dearie, to the extent he believes  
7 is appropriate, to instruct in jury instructions  
8 punishment is not for you.

9 MS. GUPTA: That's fine with us, your Honor, to  
10 eliminate that one.

11 MS. VON DORNUM: I don't know if you ordinarily  
12 ask the general question 15, your Honor. If you do, it  
13 seems to me again it's quite broad in scope. I would  
14 prefer it not be asked or at least narrowed.

15 THE COURT: Just give me one moment.

16 MS. GUPTA: Your Honor, it's fine with us to  
17 omit 15.

18 THE COURT: Okay. I typically ask the  
19 following question, which I've never actually gotten an  
20 answer to that causes someone to be excused, but do any  
21 of you have any bias or prejudice for or against Mr.  
22 Welnicki or for or against the government that would  
23 prevent you from being fair and impartial in this case?  
24 I mean no one has ever actually --

25 MS. VON DORNUM: No one's going to --

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1 THE COURT: -- raised their hand, but I ask it  
2 because, you know --

3 MS. VON DORNUM: I mean that's fine.

4 THE COURT: Okay. No one has ever raised their  
5 hand.

6 MS. VON DORNUM: You have to really want to get  
7 out to agree to that one.

8 THE COURT: Right. You never know. Sometimes  
9 you do but --

10 MS. VON DORNUM: No, no, it's fine.

11 THE COURT: Anything else? Oh, I'm sorry,  
12 there was one small matter. So I notice in the  
13 government's proposal about questions 8 and 9, you know,  
14 victim of a crime or have you been involved in a criminal  
15 investigation? I ask a general question which, you know,  
16 have you been a witness, a victim, a target, et cetera.  
17 I don't ask what the outcome is. Is there any reason to  
18 do that?

19 MS. GUPTA: Your Honor, I think it's fine to  
20 focus on whether they have been a witness or a victim  
21 rather than relatives or close friends, for example, but  
22 I do think we would want to know the outcome.

23 THE COURT: I don't even know what that means  
24 in this context.

25 MS. GUPTA: The outcome as in, you know, was

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1 there a conviction? Did they testify? I think those  
2 would be things that we would want.

3 THE COURT: I'm happy to follow up with  
4 individual, but I don't know what it means to ask what  
5 the -- I'll read you what the question is. Have you, a  
6 family member, or close personal friend ever been  
7 involved in a criminal case or investigation in any way?  
8 For example, as a complainant, a victim, a target, a  
9 subject, a defendant, or a witness? And then you follow  
10 up with whoever says whatever they say.

11 MS. GUPTA: I'm sorry, just to be clear, so you  
12 would follow up if they responded that they have?

13 THE COURT: Yes.

14 MS. GUPTA: Okay.

15 THE COURT: So if somebody -- if I say in what  
16 context?

17 MS. GUPTA: Right.

18 THE COURT: You know, for example, if someone  
19 says they were a victim, you would ask is there anything  
20 about that in terms of any law enforcement experience  
21 that would lead you to be biased for or against the  
22 government in the case? Or conversely, if it was someone  
23 who was accused of a crime or convicted of a crime,  
24 although obviously that can be disqualifying to serve in  
25 certain instances, but in other words, they wouldn't show

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1 up in the pool. But so there is follow up.

2 MS. GUPTA: Okay. That works for us.

3 THE COURT: Okay. All right. Anything else  
4 from either side?

5 MS. VON DORNUM: I just had a logistical  
6 question. Is it a brand new group on Wednesday or are we  
7 getting the remnants of Monday?

8 THE COURT: I had the same question and we're  
9 attempting to find the answer. I don't know today. But  
10 I will be able to tell you that on Wednesday morning. I  
11 don't know.

12 MS. VON DORNUM: Okay. I'm not sure what I  
13 would then say but I was just interested.

14 THE COURT: No, I mean it is pertinent just so  
15 everybody knows because it potentially means that the  
16 witnesses [sic] have been sitting for two days not having  
17 been called and perhaps I treat them a little more nicely  
18 than I otherwise would in light of the time that they've  
19 been waiting.

20 Okay. Anything else?

21 MS. VON DORNUM: No, your Honor. And we'll  
22 begin at 9 and you'll let us know where?

23 THE COURT: I will let you know what courtroom.  
24 You should probably be there at 9 just so I can -- even  
25 if the jurors are not available, Mr. Manson will give you

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1 the list if it's available as well as the list of  
2 questions so you'll have 30 minutes or so to review them  
3 if you have any changes to them. I will look for you to  
4 submit the consolidated list of names by close of  
5 business on Tuesday. Okay?

6 MS. GUPTA: Your Honor, what are the current  
7 COVID protocols? Will they be required to wear masks?

8 THE COURT: So the current COVID protocols in  
9 the courthouse are, unless we're in the courtroom 2A for  
10 arraignments, masks are optional. And each judge can  
11 require people in the courtroom to wear them. I will not  
12 be requiring it during selection. If a juror asks, I  
13 will say you're welcome to wear a mask but you are not  
14 required to. So that's the current state of the  
15 protocol.

16 MS. GUPTA: Okay.

17 THE COURT: And I don't anticipate us being in  
18 the arraignment courtroom for any purpose so there  
19 wouldn't be any circumstance where it's required.

20 MS. GUPTA: And then will they be questioned in  
21 open court or will there be sidebars?

22 THE COURT: So Mr. Manson will be handing out  
23 numbered pieces of paper and what I often do is I will  
24 ask a group of questions, three, four, five at a time,  
25 and mark down who has raised their number. And then

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1 depending on the question, I will -- some of them we will  
2 do in open court, some we will do at the sidebar. So you  
3 know, if it is do you know a lawyer or work for a lawyer  
4 or had legal training, that's an open court question,  
5 because I expect the chance that it infects the rest of  
6 the pool to be relatively small. Questions where, for  
7 instance, have you heard anything about the case, I would  
8 do it sidebar because I don't want someone blurting out  
9 something that could cause a mistrial or bias. Questions  
10 that require the juror to divulge personal or sensitive  
11 information like they've been a victim of a crime I'll do  
12 at the sidebar so that they don't have to do it in public  
13 view. But I always give the jurors the option regardless  
14 of the question. They can simply say when I say juror  
15 number 5 and they either express or appear to demonstrate  
16 some hesitancy, I say do you want to be seen at the  
17 sidebar and they always have that option.

18 MS. GUPTA: And how many jurors are questioned  
19 at a time?

20 THE COURT: So I usually do, and we have to  
21 look at the courtroom we have, strike and replace. So  
22 32, if my math is right, and then we ask the 32, and  
23 let's say juror number 5 gets excused, then juror number  
24 33 comes in and sits in juror 5's spot. So I think  
25 there's some formal name for that method. I've lost

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1 that. And for strikes, by the way, just so you know,  
2 we'll discuss that when it comes in greater detail, but I  
3 don't allow you to save up strikes. So if you don't use  
4 of peremptory strike in a particular round, you lose it.  
5 You can't save them to the end. Anything else?

6 MS. GUPTA: That's it, your Honor. Thank you.

7 THE COURT: Okay. Thank you. Have a nice day.

8 MS. VON DORNUM: Thank you, your Honor.

9 MS. GUPTA: Thank you.

10 (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 1st day of September, 2022.

  
\_\_\_\_\_  
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